

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERIC L. ESPINOZA,

Plaintiff,

vs.

No. CIV 09-0343 RB/WDS

**BOARD OF COUNTY COMMISSIONERS
OF RIO ARRIBA COUNTY, NEW MEXICO,
Rio Arriba County Detention Center, a New Mexico
Governmental Entity; BIDAL A. CANDELARIA,
Individually and in his Official Capacity as Director,
Rio Arriba County Detention Center; DENNIS R.
HERRERA, Individually and in his Official Capacity
as Assistant Administrator for Security, Rio Arriba
County Detention Center; and EIGHT UNIDENTIFIED
CORRECTIONS OFFICERS OF THE RIO ARRIBA
COUNTY DETENTION CENTER, Individually and in
their Official Capacities,**

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Plaintiff's Motion to Strike Defendants' Motion for Summary Judgment As Untimely (Doc. 42), filed on June 23, 2010. Jurisdiction arises under 28 U.S.C. §§ 1331 and 1367. Having considered the submissions and arguments of counsel, and being otherwise fully advised, the Court denies this motion.

On April 7, 2009, Plaintiff filed his Complaint for Civil Rights Violations (Excessive Use of Force Against a Jail Inmate). On September 21, 2009, the Honorable W. Daniel Schneider, United States Magistrate Judge, held a scheduling conference and set pretrial deadlines. The Scheduling Order, filed on September 22, 2009, set the deadline for dispositive motions as April 8, 2009. A settlement conference was set for February 3, 2010.

On January 29, 2010, counsel for Plaintiff filed a Joint Motion to Continue Settlement

Conference and Extend Case Management Deadlines By Sixty (60) Days. On February 1, 2010, Judge Schneider granted the portion of this Motion concerning the settlement conference by a text-only docket entry. On February 3, 2010, Judge Schneider issued a Stipulated Order Granting Joint Motion to Extend Discovery and Other Case Management Deadlines By Sixty (60) Days. Despite the title of this Order, the deadline for pretrial motions was not extended for sixty days. Instead, this Order extended the deadline for pretrial motions from April 8, 2010 to May 20, 2010.

On June 7, 2010, Defendants filed a Motion for Summary Judgment on Qualified Immunity and Causation. On June 23, 2010, Plaintiff filed his Response to Defendants' Motion for Summary Judgment, requesting that the Court deny the Motion for Summary Judgment as untimely, or allow Plaintiff a reasonable time in which to respond thereto.

On June 23, 2010, Plaintiff filed his Motion to Strike Defendants' Motion for Summary Judgment As Untimely. On June 28, 2010, Defendants filed their Response, stating that the parties intended to extend all pretrial deadlines by sixty days and Defendants acted in good faith reliance on the agreement between the parties. Plaintiff did not file a reply. The time for filing a reply expired on July 12, 2010.

It is undisputed that the parties agreed to a sixty-day extension of all pretrial deadlines. The Joint Motion to Continue Settlement Conference and Extend Case Management Deadlines By Sixty (60) Days specified that the parties requested that the deadline for pretrial motions be extended from April 8, 2010, to June 8, 2010. The earlier date of May 20, 2010, which was contained in the Stipulated Order Granting Joint Motion to Extend Discovery and Other Case Management Deadlines By Sixty (60) Days, was most likely a typographical error. Defendants filed their Motion for Summary Judgment on June 7, 2010, one day before the expiration of the agreed-upon deadline of

June 8, 2010.

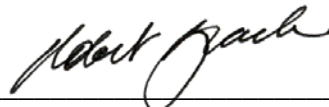
While it seems that innocent mistakes were made on both sides, neither side would be prejudiced by a nunc pro tunc extension of the deadline for pretrial motions to the agreed-upon date of June 8, 2010. Additionally, the deadline for the response will be extended by ten days from the date of this Order. A reply may be filed within fourteen days thereafter.

THEREFORE,

IT IS ORDERED that Plaintiff's Motion to Strike Defendants' Motion for Summary Judgment As Untimely (Doc. 42), filed on June 23, 2010, is **DENIED**.

IT IS FURTHER ORDERED that the deadline for Plaintiff's response to the Motion for Summary Judgment on Qualified Immunity and Causation is extended to July 30, 2010.

IT IS FURTHER ORDERED that the deadline for Defendants' reply to the response to the Motion for Summary Judgment on Qualified Immunity and Causation is extended to August 13, 2010.



ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE